IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/ 1 /2005

C O R A M

THE HONOURABLE Mr.JUSTICE V.KANAGARAJ

Criminal Original Petition No. 35117 of 2004
and
Crl.M.P.No.10962/2004

A. Abdul Samath ... Petitioner

Vs

The Chief Enforcement Officer
Directorate of Enforcement
Shastri Bhawan
III Floor
Chennai 600 006. ... Respondent

Petition filed under Section 482 of Cr.P.C., praying for the relief as stated therein.

For petitioner ... Mr.Ajmeer Ali
For respondent ... Mr.K.Kumar, SC
for Mr.M.Dhandapani,ACGSC

O R D E R

Criminal Original Petition is to call for the records relating to E.O.C.C.No.1164 of 1994 on the file of Additional Chief Metropolitan Magistrate, E.O.II, Egmore, Chennai 600 008 and to quash the same.

2. The case of the petitioner is that the petitioner's residence was searched by the respondent Officers on 15/7/1993, as a result of which, foreign currencies were seized and now, it is in the custody of the respondent Officers; that The Special Director/Adjudicating

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Officer of Enforcement Directorate, New Delhi, issued an unsigned show cause memorandum dated 29/12/1993 under Section 51 of the Act (not under Section 61 of the said Act) and the same was served to the petitioner only on 15/4/1994; that the respondent had filed a criminal complaint No. E.O.C.C.No.1164 of 1994 before the Additional Chief Metropolitan Magistrate, E.O.II, Egmore, Chennai 600 008; that the complaint was not on the basis of evidence of contravention by the Adjudicating Officer; that Section 61 (2) of FERA 1973 reads as follows: "No Court shall take cognizance of any offence punishable under Sections 56 or 57, except upon complaint in writing made by (a) The Director Enforcement or (b). any Officer authorized in this behalf by the Director of Enforcement or the Central Government; or (c) any Officer of the Reserve Bank authorized by Reserve Bank by a general or special order: Provided that where any such offence is the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder which prohibits the doing of an act without permission, no such complaint shall be made unless the person accused of offence has been given an opportunity of showing that he had such permission."; that the Magistrate can take cognizance of an offence/complaint only when there is a proved contravention adjudged by an authorized officer and this contravention is to be ascertained only by the adjudicating officer and not by any other unauthorized officer and the Magistrate can take cognizance of an offence/complaint only after an opportunity was given to the accused of an offence whether he had such permission or not, either by Reserve Bank as the same is concerned for permission or by the complainant/respondent; that the Chief Enforcement Officer had filed a complaint even before the Adjudicating Officer gives his findings for contravention; that the order of the adjudicating officer must be the basis for the complaint against the accused since the order of that authority is obtained after he gets satisfaction and thus, it is equivalent to the sanction; that the respondent has no authority to file a complaint unless the findings are to be given by the proper adjudicating officer and opportunity is to be given under the proviso to Section 61 of FERA 1973 and hence, the petitioner would seek the relief stated supra.

3. Heard the learned counsel for both and perused the materials placed on record.

4. Learned counsel for the petitioner would cite a judgment rendered by the Apex Court reported in STATE OF HARYANA AND OTHERS Vs. Ch.BHAJAN LAL AND OTHERS wherein it

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

is held:

> "In following categories of cases, the High Court may in exercise of powers under Article 226 or under Section 482 of Cr.P.C., may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, the power should be exercised sparingly and that too in the rarest of rare cases" and continued as "Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceeding and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.";

Therefore, filing of a complaint when there is a legal bar is unlawful and illegal on the part of the respondent and taking cognizance by the Additional Chief Metropolitan Magistrate, E.O. II, Egmore, Chennai is abuse of process of law. The petitioner filed a petition in Crl.M.P.No.717 of 1999 in E.O.C.C.No.1164 of 1994 before the Additional Chief Metropolitan Magistrate, E.O.II, Egmore, Chennai, praying to dismiss the complaint filed against him and the same was rejected by the Additional Chief Metropolitan Magistrate, without considering the submissions and without proper application of mind on the Act and the same was submitted before the Principal Sessions Judge, Chennai in Cr.R.C.No. 85 of 2000 and the same was dismissed.

5. Learned counsel would further cite a judgment of the Honourable Apex Court reported in G.L.DIDWANIA Vs. I.T.O. (1999 (108) ELT 16 (SC) that the order of the fact finding Tribunal is the evidence of contravention. In this case question of law has been involved and therefore, it is just and proper for the petitioner to approach this Court under Section 482 of Cr.P.C.

6. On the other hand, on the part of the Additional Central Government Standing Counsel, appearing on behalf of the respondent, would submit that it is a serious case registered by Special Director, Directorate of Enforcement,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

FERA, New Delhi. The learned counsel would point out that on information, the residential premises of the petitioner was searched by respondent officers on 15.7.2003 and effected seizure of the following foreign currencies, kept in four bundles. They are:

a) US $	:	1,92,493
b) Saudi Riyals	:	5,44,000
c) Qatar Riyals	:	12,000
d) UAE Dis	:	70,500
and		
e) Singapore $	:	11;

that the petitioner had been employed as Inspector of Police in the Computer Technical Services, Madras and joining Company with some of his friends in Singapore, started dealing in Gold, Silver and foreign currency without paying the necessary customs duty. The learned counsel for the respondent would further state that based on the confession statement, made on the part of both the accused, they were arrested and investigation was done and in these circumstances, already petitions filed by the petitioner, who is the first accused and another C. Balu, who is the second accused on the same ground, were dismissed by the Chennai Metropolitan Magistrate, E.O.II, Egmore Chennai as per order dated 16.3.2000 made in Crl.M.P.Nos.1488/98 and 717/99, filed by the second accused and the petitioner.

7. The main challenge in the present petition is that the complainant has not followed the procedures laid down under Sec.61 of the FERA Act 1973 and no notice, as contemplated under Section 61(2) of the said Act has been issued to the accused and that no opportunity was afforded to him by the adjudicating officer.

8. The learned Magistrate, dealing with the above petitions, remarking that the entire transaction had taken place in the City of Chennai; that this petitioner, being a former Inspector of Police and the other accused (A.2), having a shop at Burma Bazaar, on definite information, the prosecuting Officers raided the residence of the petitioner on 15.7.93 and effected seizure of all foreign currencies and in the statement given immediately, the petitioner had admitted the fact and as to how he got in touch with the second accused and other bad elements and after receipt of goods in gold and silver, how he converted the sale proceeds into foreign currencies and used to send the money to one Haja Alaudeen as per the arrangements made by them; that on the subsequent day, the premises of the second accused was also searched and a statement of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

said accused was recorded, which was correlating the statement of the petitioner; that yet another third accused is also involved in the deal and since he failed to appear before the Court, non-bailable warrant was issued by the Magistrate and hence the case was split and separate trial was held against this petitioner and the second accused.

9. According to the learned Central Government Standing Counsel, appearing for the respondent , the trial is almost over and at this stage, the petitioner has come forward with the above petition, seeking to quash the proceedings.

10. Having already failed before the Lower Court on the same points, wherein the trial Magistrate, having considered, ultimately, without accepting any of the grounds raised much less the legal ground, on answering them in a fitting manner, dismissed the applications filed on behalf of the petitioner and the second accused.

11. In the course of discussion, the learned Magistrate would also extract the relevant provisions of law envisaged under Sec.61 of FERA and 61(2) and analysing the same in the context of the procedures followed by the adjudicating officer, would find the mandatory provisions contemplated under Sec.61 of FERA Act and the rules made thereunder. Having been fully complied with and the accused having received the copies during 1994 till the date of passing of the said order by the trial Magistrate, they were dragging on the matter for asking some particulars or other. The learned Magistrate also considered the earlier judgment cited and would arrive at the valid conclusion to dismiss the petition filed by the petitioner and it is again for the same ground the petitioner has come forward to file the above petition, though no such order had already been passed by the trial Magistrate, dismissing a similar petition filed by him earlier, against which even a Criminal Revision Petition filed before the Court of Sessions, Chennai and even that revision had been dismissed for the reasons assigned and now left with no alternative, the petitioner has come forward to file the above petition.

12. It is a heinous crime committed on the part of the petitioner in violation of FERA, keeping in his possession foreign currencies of different countries, totalling valued in terms of Indian Money, more than Rs.44,00,000/- and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

since each and every minute detail has to be gone into on trial, it is not the case to be decided by this Court by invoking its inherent powers, conferred under Sec.482 of Code of Criminal Procedure. Since this Court is also able to see all the requirements of Sec.61 of FERA Act has been complied with by the enforcement officials and further since the trial itself is almost over, this sort of petition is only to delay the process and the the above petition filed on the part of the petitioner/first accused becomes liable only to be dismissed and hence the following Order:

13. In result, the above Criminal Original Petition does not merit acceptance, but becomes liable to be dismissed and is dismissed accordingly. Consequently, the connected Crl.M.P is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sr

To

1. The Additional Chief Metropolitan Magistrate,
   E.O.II, Egmore, Chennai 600 008

2.-do- Thro' The Chief Metropolitan MAgistrate
Egmore, Chennai -8

SMK (CO)
km/10.2.

Crl.O.P. No.35117 of 2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/